

Memorandum in Urging Approval

COMMITTEE ON ANIMALS AND THE LAW

Animals #19

July 27, 2021

S. 4866
A. 3930

By: Senator Gianaris
By: M. of A. Englebright
Senate: Passed
Assembly: Passed
Effective Date: Immediately

AN ACT An act to amend the environmental conservation law, in relation to increasing certain penalties relating to endangered and special species, species of special concern and illegal ivory articles and rhinoceros horns

LAW & SECTIONS REFERRED TO: Subdivision 13 of section 71-0925 of the Environmental Conservation Law is to be amended.

THE COMMITTEE ON ANIMALS AND THE LAW SUPPORTS THIS LEGISLATION

Protecting species from the risk of extinction exacerbated by illegal wildlife trafficking¹ fundamentally requires reducing the public's demand for illicit items and creating disincentives that outweigh the benefits of the illegal activity. This legislation takes important steps towards meeting those twin objectives.

First, the legislation increases two-fold the monetary civil penalties implemented under subdivision 13 of Section 71-0925 of the Environmental Conservation Law ("ECL") for violations of laws governing endangered species², threatened³ species, species of special concern⁴, and for violations of the laws related solely to the intra-state sale of included wild species⁵. Specifically, it doubles the penalty to a maximum of four thousand dollars

¹ UNODC, Criminalization of Wildlife Trafficking, <https://www.unodc.org/e4j/en/wildlife-crime/module-3/key-issues/criminalization-of-wildlife-trafficking.html> - last visited July 7, 2021 (Generally, absent a universal definition, wildlife trafficking involves "...the illegal trade, smuggling, poaching, capture, or collection of endangered species, protected wildlife [including animals or plants that are subject to harvest quotas and regulated by permit]), derivatives, or products thereof.")

² N.Y. Env. Conserv. Law § 11-0535(1) ("[Endangered species" shall mean those species of fish, shellfish, crustacea and wildlife designated by the department, by regulation filed with the Secretary of State, as seriously threatened with extinction. . . .")

³ Id. ("[T]hreatened species" shall mean those species of fish and wildlife designated by the department, by regulation filed with the Secretary of State, which are likely to become endangered species within the foreseeable future throughout all or a significant portion of their range...")

⁴ Id. "[S]pecies of special concern" shall mean those species of fish and wildlife designated by the department, by regulation filed with the Secretary of State, which are found by the department to be at risk of becoming threatened in New York.)

⁵ N.Y. Env. Conserv. Law § 11-0536, Sale of certain wild animals or wild animal products prohibited.

for violations of subdivision 2 of the ECL section 11-0535, which prohibits the unlawful “taking, importation, transportation, possession or sale of any endangered or threatened species of fish, shellfish, crustacea or wildlife,” including animal parts or articles manufactured from the animal. Additional penalties of seven hundred dollars, increased from the current three hundred and fifty dollars, attach to each wildlife specimen or part thereof that is a subject of the violation. The same penalty provisions extend to violations of ECL section 11-0536 which prohibits the intra-state sale of specific species and those species’ subparts. Furthermore, penalties related to violations of the rules and regulations protecting species of special concern under subdivision 3 of ECL 11-0535 are increased to a maximum of two thousand dollars from the previous cap of one thousand dollars. Additional penalties not to exceed four hundred dollars, increased from a cap of two hundred dollars, attach for each specimen or subpart of fish, shellfish, crustacea or wildlife involved in the violation.

Section 2 of the bill requires the Commissioner of the Department of Conservation to inform the public of the need to protect endangered and threatened species and of the laws and penalties relating to such legal protections. The importance of this addition to the bill cannot be overstated. By creating public awareness of the harms of illegal wildlife trafficking, the need to protect at risk species, the protections established, and the consequences for violating the laws protecting at risk species, this legislation will have a deterrent effect. New York’s efforts to protect elephants from extinction through laws and raising public awareness provides an excellent example.

Responding to its then-notorious reputation as a primary United States destination for trafficked ivory, in 2014 New York enacted the State’s ivory law⁶, banning, with limited exceptions, the sale, purchase, distribution and possession of elephant and mammoth ivory and rhino horn within the State. Following that ban, offers for sale and display of ivory products in New York dropped from more than 11,000 instances in 2006 to 204 in 2016⁷. There also has been a decrease in the offers for sale and display of ivory products following the 2016 crushing of an estimated two tons of confiscated ivory valued at over eight million dollars, in New York City. This event in particular helped raise awareness to the plight of the world’s elephants and New York’s commitment to their protection⁸.

Many people are unaware which animal species are endangered and protected, making legal and illegal trade difficult to distinguish. Furthermore, although threats of extinction are well documented for iconic species such as elephants and rhinoceros, several species of endangered mollusks, birds and reptiles native to New York also at great risk of exploitation are less known. We applaud the sponsors’ insight in increasing the penalties

⁶ N.Y. Env. Conserv. Law § 11-0535-a. Illegal ivory articles and rhinoceros horns

⁷ Art & Antique Dealers League Of America, Inc.v. Seggos, 394 F.Supp.3d 447 (S.D.N.Y. 2019)(A consortium of antique’s dealers challenged the constitutionality of several provisions of New York’s Ivory Law, all of which were upheld by the Court, which cited the success of the restrictions to meet the state’s objectives to regulate ivory and rhino horn commerce within the state).

⁸ “Governor Cuomo Commemorates Central Park Ivory Crush,” August 7, 2017, official website of New York State, <https://www.governor.ny.gov/news/governor-cuomo-commemorates-central-park-ivory-crush> last visited July 7, 2021.

for illegal wildlife trafficking, while alerting the public to the need for protections and the associated laws addressing the motivations that give rise to illegal wildlife trafficking.

For these reasons, the Committee on Animals and the Law **SUPPORTS** this legislation and urges the governor to sign S.4866/A.3930 into law.